IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

FRIDAY, THE 13TH JULY 2007 / 22ND ASHADHA 1929

AS.No. 159 of 2002()

OS.1076/1991 of PRL.SUB COURT,TRIVANDRUM
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APPELLANT:

A.RAJAMOHANAN NAIR,
ASSISTANT EXECUTIVE ENGINEER,
GROUND WATER DEPARTMENT, RESIDING AT T.C.3/1165,
LEKSHMI NAGAR, L.I.C. LANE, PATTOM,
MADATHUVILAKOM, THIRUVANANTHAPURAM.

BY ADV. SRI.ANTONY KUREETHARA

RESPONDENTS: PLAINTIFF/DEFENDANT 2 AND 3
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1. P.S.VELAYUDHAN NAIR,
S/O.SIVARAMA PILLAI, RESIDING AT
THAKIDIYIL MUKKUMLARA, PUTHEN VEEDU,
VALIAMCODE, KALLIYOOR VILLAGE,
PALLICHAL, THIRUVANANTHAPURAM.

2. INDIRA AMMA, D/O.PARUKUTTY AMMA,
W/O. P.S.VELAYUDHAN NAIR, DO.DO.

3. SULOCHANA, D/O.INDIRA AMMA, DO.DO.

4. I.GEETHAKUMARI(MINOR),
REP. BY FATHER AND GUARDIAN 1ST RESPONDENT, DO.DO.

5. THE COMMISSIONER,
CITY CORPORATION OF THIRUVANANTHAPURAM .

6. KERALA STATE ELECTRICITY BOARD,
REP. BY ITS SECRETARY, VYDHUTHY BHAVAN ,
PATTOM, THIRUVANANTHAPURAM .

R5 BY ADV. SRI.N.NANDAKUMARA MENON,SC,TVM CORPN.
SRI.S.GOPAKUMARAN NAIR
R6 BY ADV. SRI.C.C.THOMAS, SC, K.S.E.B
SRI.PULIKOOL ABUBACKER, SC, KSEB
SRI.C.K.KARUNAKARAN, SC FOR KSEB

THIS APPEAL SUITS HAVING BEEN FINALLY HEARD
ON 25/6/2007, ALONG WITH RFA NO. 140 OF 2003 THE COURT ON 13/7/2007
DELIVERED THE FOLLOWING:

Kurian Joseph & T.R. Ramachandran Nair, JJ.

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A.S.NO.159/2002 & R.F.A. No.140/2003

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Dated this the 13th day of July, 2007

JUDGMENT

T.R. Ramachandran Nair, J.

Both these appeals arise from the judgment and decree in O.S. No.1076/1991 before the Principal Sub Judge's Court, Thiruvananthapuram. A.S. No.159/2002 is filed by the first defendant in the suit and R.F.A. No.140/2003 is filed by the second defendant in the suit.

2. The suit is one for damages. The claim arose consequent on the electrocution of one Sreekumaran Nair on 8.10.1986. The first plaintiff in the suit is his father and the other plaintiffs are his mother and sisters. The deceased was employed by the first defendant in the construction of his house. The deceased was working as a helper. At about 11.30 a.m. While the deceased was engaged in the plastering work of the rear side of the wall in the first floor of the house along with three other workers, he was electrocuted and the scaffolding on which he was standing tilted and G.I. Pipe used as horizontal pipe came into contact with the 11 K.V. line. The total claim was to the tune of Rs.1,44,000/-.

3. The first defendant in the suit is the owner of the building, the

second defendant is the Commissioner, Corporation of Thiruvananthapuram and third defendant is the Kerala State Electricity Board. After taking evidence, the suit was decreed allowed the plaintiffs to recover from the defendants a sum of Rs.1,44,000/- with 6% interest from the date of suit till realisation together with cost, directing each of the three defendants to contribute one third of their share to the total decreed amount. Aggrieved by the same, the first and second defendants have come up in appeal.

4. First we will deal with R.F.A. No.140/2003 filed by the second defendant in the suit, viz. Corporation of Trivandrum. The Corporation was arrayed as a defendant in the following circumstances; going by the averments in the plaint: According to the plaintiffs, the building was being constructed in flagrant violation of the Building Rules especially with respect to the statutory clearance between the building and the overhead electric supply line. The Corporation, according to the plaintiffs, ought to have denied the sanction to construct the building and they failed to take steps when the construction violated the Building Rules.

5. In the written statement filed by the appellant Corporation, it was contended that there was no violation of statutory provisions and no negligence can be attributed to the Corporation for making it liable for the damages claimed. It was contended that the Corporation had approved the

site plan of the building as it was in tune with the relevant rules. The action of the first defendant in deviating from the approved plan at the time of construction make him only liable for the same. As per the approved plan, the open space to be left to the north eastern boundary was 3.2 metres. The statutory distance between the overhead 11 K.V. line and the building is 1.87 metres. The building was originally proposed to be constructed having an open space of 3.2 metres on the eastern side of the property whereby a horizontal clearance of 2 metres from 11 K.V. line was available. The first defendant left 2 metres only on the eastern side which reduced the horizontal clearance of overhead electric line to the building from 2 metres to .80 metre. For this change, there was no approval of the Corporation. It was therefore pointed out that the first defendant is answerable for the deviation from the approved plan.

6. While assessing the liability of the appellant Corporation, the court below cast liability mainly on the reasoning that the Corporation was negligent in supervising the construction of the building to see that the same is in tune with the approved plan. The trial court observed that the dereliction of duty on the part of the Corporation led to the unauthorised construction whereby the live electric line happened to be at a distance shorter than what is prescribed by law. It was held that this is also a

contributory factor to the accident leading to the death of the son of the first plaintiff. It was accordingly held that the Corporation is also liable for the damages claimed.

7. Learned counsel for the Corporation pointed out that the approach made by the court below is grossly erroneous. The electrocution is only a direct result of the G.I. Pipe coming into contact with the 11 K.V. line and no negligence can be attributed on the part of the Corporation for the said incident. It was submitted that the liability, if any, for the violation of Building Rules was on the first defendant and there was no failure to perform the statutory duties on the part of the Corporation.

8. We find that the said argument is of considerable force. The suit is one claiming damages consequent on the fatal accident. The same is sought against the appellant Corporation presumably on the plea of contributory negligence, in view of the failure to supervise the construction. Of course, contributory negligence on the part of a tort feasor can make him liable. But going by the pleadings and evidence in this case, such a liability cannot be found. Merely because the construction of the building was in violation of the Building Rules, that will not make the Corporation liable to pay damages claimed here. The act resulting in the accident has no proximate connection with any action or inaction of the Corporation. It is

well settled that in tort, the real test is whether the damages are the direct consequences of the breach. No liability can be cast when the damages are remotely connected with the wrongful act against which the complaint is made. When the test of remotness of damage in tort is applied to the facts of this case, we find that the plaintiffs have failed to prove negligence on the part of the appellant Corporation in assuming that the accident was due to the direct consequences of the breach of statutory duty. The damages which are the direct consequences alone can be recoverable. The doctrine of strict liability also is not attracted to the facts of this case, as against the Corporation. As held by the Honourable Supreme Court in **M.P. Electricity Board v. Shail Kumari** (2002 (1) KLT 480) "when the doctrine of strict liability is attributed, even assuming that all measures have been adopted, a person undertaking an activity involving hazardous or risky exposure to human life, is liable under law of torts to compensate for the injury suffered by any other person, irrespective of any negligence or carelessness on the part of the managers of such undertaking. The basis of such liability is the foreseeable risk inherent in the very nature of such activity. The liability on such person is known, in law, as "strict liability". It differs from the liability which arises on account of the negligence or fault

in this way, ie., the concept of negligence comprehends that the foreseeable harm could be avoided by taking reasonable precautions. If the defendant did all that which could be done for avoiding the harm, he cannot be held liable when the action is based on any negligence attributed. But such consideration is not relevant in cases of strict liability where the defendant is held liable irrespective of whether he could have avoided the particular harm by taking precautions." Therefore, this is not a case where the doctrine of strict liability applies as far as the appellant Corporation is concerned. One of the well known exceptions to the doctrine of strict liability is an act of stranger and another one is remotness of the consequences. A defendant is answerable under the above principle for the damage which is the natural consequence alone. Judged in the light of the above principles, we are of the view that the appellant Corporation cannot be held liable for the damages claimed. Admittedly, the building had to be constructed under an approved plan and for any violation of the approved plan in effecting the construction, the first defendant alone could be made liable. The accident is not of any direct consequence or any negligence on the part of the appellant Corporation.

9. Hence, we allow R.F.A. No.140/2003 and set aside the decree directing recovery of damages to the tune of one third from the appellant

Corporation.

10. A.S. No.159/2002 is filed by the first defendant who was constructing the building in question. It was argued that the deceased was never entrusted with any work at the construction site and he was only a stranger. It is further submitted that the deceased himself was negligent in using of G.I. Pipe for making the scaffolding causing it to come into contact with the 11 K.V. line. It was also contended that the building was being constructed as per the approved plan and there is no violation of the same.

11. The first defendant is the owner of the building. It is proved in evidence that the deceased was, at the time of the accident, engaged for the construction activities of the building. The court below found that there was absolutely no evidence to show that the first defendant had entrusted the construction work to somebody else. The burden was heavily on the first defendant to show as to how the deceased happened to be employed. That was not discharged and the court below rightly concluded, therefore, that the first defendant is liable for the negligence in causing the accident and is hence liable to compensate for the damages claimed. The court below had relied upon the report of the Electrical Inspector, Ext.A8. It is shown therein that the statutory clearance was not maintained from the electric line. Therefore, as regards the non-maintaining of the statutory

clearance, the first defendant's liability cannot be disputed. It cannot, therefore, be said that the victim had contributed to the accident. Hence, the court below was right in finding the first defendant liable. The appeal fails and the same is dismissed.

Therefore, A.S. No.159/2002 is dismissed and R.F.A. No.140/2003 is allowed. The appellant in A.S. No.159/2002 and the 6th respondent, Kerala State Electricity Board are jointly and severally liable for the amount decreed.

(Kurian Joseph, Judge.)

(T.R. Ramachandran Nair, Judge.)

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Kurian Joseph & T.R.
Ramachandran Nair, JJ.

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A.S.NO.159/2002 &
R.F.A. No.140/2003

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JUDGMENT

13th July, 2007